Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

BARBARA J. HALE ,
Petitioner,

vs.

NATIONAL CENTER FOR STATE COURTS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE NINTH JUDICIAL CIRCUIT COURT
CITY OF WILLIAMSBURG,
JAMES CITY COUNTY, VIRGINIA

PETITION FOR WRIT OF CERTIORARI

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Petitioner

48 pp

QUESTIONS PRESENTED

1. Whether the trial court erred when it failed to recognize that the federal statutes which petitioner was required by law to observe were relevant in Virginia in violation of the Supremacy Clause of Article VI of the Constitution and petitioner's right to equal protection under the law and the due process clause of the Fourteenth Amendment?

2. Whether the trial court erred when it limited its consideration of perjury to Virginia law section 18.2-434 and failed to recognize the required signing of a document under penalty of perjury as an oath-equivalent, imposing an onerous and unreasonably narrow definition of perjury and then ruling that petitioner could not have committed perjury by affirmation and granted summary judgment based on such erroneous definition, in violation of petitioner's right to equal protection under the law and the due process clause of the Fourteenth Amendment.

3. Whether rule 3:18 of the rules of the Supreme Court of Virginia prohibiting the use of affidavits in summary judgment proceedings and excluding evidence which would be admissible at trial denies equal protection under the law and violates the due process clause of the Fourteenth Amendment

4. Whether the trial court erred when it failed to recognize that Chapter 20 (§54.1-2000 et seq.) of Title 54.1 of the Code of Virginia was relevant in Virginia and that petitioner, as a licensed CPA in the Commonwealth of Virginia, was required by Virginia law to observe in violation of petitioner's right to equal protection under the law and the due process clause of the Fourteenth Amendment?

5. Whether the respondent's intentional presentation of deceptive and misleading statements and the use of testimony by respondent's lead witnesses which counsel knew was perjured constitutes a fraud upon the court and a violation of Virginia Code of Professional Responsibility, DR 7-102(A)(4), (5) and (6) and whether the court's reliance on such false testimony in granting summary judgment deprived petitioner of her right to a trial and due process as protected by the Seventh and Fourteenth Amendments.

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PETITION FOR WRIT OF CERTIORARI

Barbara J. Hale, the Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the Ninth Judicial Circuit Court of the City of Williamsburg, James City County, Virginia.

OPINIONS BELOW

The opinion of the Ninth Judicial Circuit Court of the City of Williamsburg, James City County, Virginia appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the Supreme Court of the Commonwealth of Virginia denied discretionary review is May 28, 1997. A copy of that decision appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C §286. Conspiracy to defraud the Government with respect to claims - Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined under this title or imprisoned . . .

18 U.S.C. §287. False, fictitious or fraudulent claims - Whoever makes or presents to any person . . . or any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned . . .

18 U.S.C. §1001. Statements or entries generally - Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies . . . or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned . . .

18 U.S.C. §1003. Demands against the United States - Whoever knowingly and fraudulently demands or endeavors to obtain . . . or to have . . . or other debt due from the United States . . . received, or paid by virtue of any false, forged. . . authority, or instrument, shall be fined under this title or imprisoned . ..

18 U.S.C. §1018. Official certificates or writings - Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned . . .

18 U.S.C. §1341. Frauds and swindles – Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing

whatever to be sent or delivered by the Postal Service . . . shall be fined under this title or imprisoned . . .

31 U.S.C. §3729. False claims
(a) Liability for Certain Acts. –Any person who—
(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval;
(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government …
is liable to the United States Government for a civil penalty …

Virginia §1-13.16. Oath. – The word "*oath*" shall be construed to include an affirmation in all cases in which by law an affirmation may be substituted for an oath.

Virginia §18.2-204. False statement for the purpose of defrauding industrial sick benefit company. – Any agent … or other person who shall knowingly or willfully make any false or fraudulent statement or representation of any material fact …(3) For the purpose of procuring … the payment of any false or fraudulent claim against any such company … shall be guilty of a Class 3 misdemeanor.

Any such person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability … for the purpose of procuring payment of a benefit … shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this Commonwealth in relation to the crime of perjury.

Virginia §38.2-4134. Penalties. – A. Any person who willfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose

of obtaining money from or a benefit in any society shall upon conviction be fined … or be imprisoned …

B. Any person who willfully makes a false or fraudulent statement in any report or declaration required or authorized by this chapter, or of any material fact …shall be guilty of perjury and shall be subject to the penalties therefor prescribed by law.

Virginia §54.1-2006. Unprofessional conduct. The Board may revoke or suspend a license or certificate or impose lesser sanctions for any of the following causes: (3) Unprofessional conduct in violation of the Standards of Practice adopted by the Board. … (5) Dishonesty, fraud, or negligence in the practice of public accountancy. … (7) Violation of any of the provisions of this chapter or any regulation promulgated by the Board.

Virginia Code of Professional Responsibility, Canon 7, A Lawyer Should Represent a Client Zealously Within the Bounds of the Law, Disciplinary Rule DR 7-102. Representing a Client Within the Bounds of the Law.

A. In his representation of a client, a lawyer shall not:

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

Rules of Supreme Court of Virginia, Rule 3:18 Summary Judgment - …No motion for summary judgment … shall be sustained when based in whole or in part upon any discovery depositions under Rule 4:5, unless all parties to the action shall agree that such deposition may be so used.

STATEMENT OF MATERIAL PROCEEDINGS AND STATEMENT OF THE CASE

Petitioner resigned her employment with the National Center for State Courts ("National Center") on January 15, 1992. On January 15, 1993 Petitioner filed a Motion for Judgment in the Circuit of the City of Williamsburg in James City County, Virginia against the National Center, amended on November 25, 1993, alleging breach of contract, emotional distress and wrongful discharge. On April 8, 1994 the trial court granted the respondent's demurrer with respect to Petitioner's breach of contract. Petitioner stipulated to the dismissal of her emotional distress claim. The demurrer was overruled with respect to the wrongful discharge claim.

After massive amounts of discovery and several court hearings on a variety of issues, respondent filed a Motion for Summary Judgment on February 20, 1996. The Motion for Summary Judgment raised issues essentially identical to the demurrer but asserted that "the undisputed facts (based completely upon Petitioner's own pleadings and her responses to Requests for Admissions) demonstrate that the National Center did not discharge her in violation of a statutorily conferred right. It did not discharge Petitioner at all. She resigned and Virginia does not recognize a claim of constructive wrongful discharge."

The trial court granted the Motion for Summary Judgment by Order entered October 19, 1996. Petitioner appealed to the Virginia Supreme Court. On May 28, 1997 the Virginia Supreme Court denied review citing no reversible error.

It is to the trial court order that Petitioner petitions for a writ of certiorari to this court.

The facts in this case are sharply in dispute and the recital of facts set forth in the trial court opinion sustaining

the Motion for Summary Judgment does not represent the facts either accurately or in the light most favorable to the Petitioner.

January 15, 1992 Petitioner, a CPA licensed in the Commonwealth of Virginia resigned as Controller of the National Center for State Courts. I had been employed with the National Center for 17 years. I allege my resignation was the result of my refusal to certify financial statements submitted to the federal government, state government and other federal and state agencies because the information was based on falsified time sheet data.

I was required by federal and state statutes and grant guidelines, whenever I submitted a form containing financial information, to sign a certification stating, "I hereby certify under penalty of perjury that the foregoing information is true and correct to the best of my knowledge and belief". The American Institute of Certified Public Accountants and the Virginia State Board of Accountancy maintain a code of professional conduct and statutory requirements which set forth rules and regulations concerning integrity which I am required to observe to remain certified and licensed.

In May, 1990 I attended a seminar sponsored by Deloitte & Touche given by the Washington, DC law firm of Jones, Day, Reavis and Pogue concerning the accountant's responsibilities in recovering overhead on government contracts and grants. In that seminar I was reminded that I had a firm obligation to ensure the honesty and integrity of the information that went forth from the National Center. Dale H. Oliver, a partner in Jones, Day, concentrated his presentation on the consequences for failure to properly account for time and money, indicating it could lead to criminal sanctions against the individual accountant in question.

Under the system of accounting required by the federal regulations for grants of the type utilized by the National Center it is mandated[1] that each person keep an accurate and complete record of all time spent to ensure that salary costs, fringe benefits and overhead are allocated appropriately across the various projects undertaken.

Contrary to this requirement, the National Center had developed an unofficial practice whereby a person working more than the minimum 37.5 hour standard work week would choose which hours to record on his/her timesheet, and thus shift the hours and related costs around to suit themselves. Despite the fact this practice was in violation of federal grant guidelines and generally accepted accounting principles, the practice was condoned, and in fact encouraged, by the National Center's upper level management, i.e., vice presidents as well as Larry L. Sipes, President at the time.

For two years prior to my resignation I made numerous complaints to Larry Sipes and Linda Caviness (Vice-President/Chief Financial Officer and my immediate supervisor) regarding the falsification of accounting data. The most serious allegation was the manipulation of time sheet cost allocations by the deliberate failure to record all time worked. I tried to stop these impermissible practices and to impress upon Mrs. Caviness the essential nature of accurate time reporting. Toward this end, from May 10, 1990 to January 7, 1992 I prepared at least thirteen memoranda to management, all of which fell on deaf ears. My first memorandum directly to Larry Sipes of June 25, 1990 suggested a certification be placed on National Center timesheets requiring a certification by staff that time allocations were in accordance with grant guidelines. For two years management refused to address or correct any of

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[1] United States Department of Justice Financial and Administrative Guide for Grants, OJPM7100.1D; OMB Circulars A110, A122 and A133.

the problems and specifically refused to require such a certification by staff.

Following a situation in which Linda Caviness clearly directed a subordinate department head to incorrectly fill out her December 31, 1991 time sheet and then refused to correct it, I knew, rather than just suspected, that the integrity of the financial system had been compromised and compromised at the highest level. That was the final straw, and on January 9, 1992 by memo to Larry Sipes, I advised him that the falsification of timesheets was being done at the direction of Linda Caviness and stated that I would no longer sign any documents wherein I was required to certify the correctness of the information.

Incredibly, Mr. Sipes' memorandum response was to direct me to meet with Mrs. Caviness, the very person directing the falsification, to clarify what parts of my job I would not do, despite the fact that my memo was perfectly clear that the only thing I would not do was sign any document requiring my certification as to the accuracy of the information I believed was false.

On January 15, 1992 I met with Mrs. Caviness. It was clear to me from that meeting that nothing was going to change with respect to the manipulation of timesheets. It was clear to me that the falsification of time sheets was at the direction of senior management and with senior management's full knowledge that the practice was in violation of the federal regulations regarding time reporting for non-profit organizations. I therefore tendered the resignation sought by management as I was left with the choice of certifying future financial statements based on known and unchanged falsified timesheet allocation data or resign. I resigned.

REASONS FOR GRANTING THE PETITION

1. The trial court erred when it failed to recognize that the federal statutes which petitioner was required by law to observe were relevant in Virginia in violation of the supremacy clause of Article VI of the Constitution and petitioner's right to equal protection under the law and the due process clause of the Fourteenth Amendment.

The documents I was required to sign were federal, as well as state, to obtain federal and state money. Federal law is controlling and signing and submitting a false affirmation would be perjury under federal law and punishable by fine and/or imprisonment (18 U.S.C. §286, 18 U.S.C. §287 et. seq., 18 U.S.C. §1001, 18 U.S.C. §1003, 18 U.S.C. §1018, 18 U.S.C. §1341 et. seq., 31 U.S.C. §3729.). The trial court cannot use and apply a state definition of perjury to a federal requirement and rule that petitioner could not have committed perjury and then not enforce the federal law. The trial court erred when it gave preference to its law while not affording the same protection, rights or consideration to federal law in violation of the federal supremacy clause of Article VI of the Constitution and in violation of the due process clause of the Fourteenth Amendment. Under Article VI of the Constitution of the United States, federal law is the supreme law of the Land, and "the judges in every state shall be bound thereby anything in the Constitution or laws in any state to the contrary not withstanding." The Fourteenth Amendment provides that no state shall make or enforce any law which denies to any person within its jurisdiction the equal protection of the laws. Virginia is not allowed to pick and choose which federal laws to apply in the Commonwealth, Sullivan v. Little Hunting Park, Inc., 90 S.Ct. 400, 396 U.S. 229, 24 L.Ed. 2d 386 (1969) holding in dicta. that state courts cannot refuse to enforce federal law.

2. The trial court erred when it limited its consideration of perjury to Virginia law section 18.2-434 and failed to recognize the required signing of a document under penalty of perjury as an oath-equivalent, imposing an onerous and unreasonably narrow definition of perjury and then ruling that petitioner could not have committed perjury by affirmation and granting summary judgment based on such unreasonably narrow definition, violating petitioner's right to equal protection under the law and the due process clause of the Fourteenth Amendment.

The general perjury statute in Virginia, §18.2-434 mentions only oath. It is clear, however, that §18.2-434 read in conjunction with §1-13.16 makes an affirmation an oath-equivalent for perjury purposes in Virginia. There is a further extension of oath. Where provided by statute that a document must be signed "under the penalty of perjury," the signing of the document is an oath-equivalent. In the case of a document signed under the penalty of perjury, there is an equivalent to the lawful administration requirement. The 'under penalty of perjury' must be statutorily required.

Sections 18.2-204 and 38.2-4134 are internally similar statutes in Virginia which create both false statements and perjury crimes relating to insurance claims. These sections make the false statements perjury if they are also sworn statements. As these statutes do not contain penalties, the conduct denominated perjury must be prosecuted under §18.2-434. The signing of a false certification on financial statements for a claim against federal or state money as in the instant case is certainly equivalent to the signing of false statements with respect to insurance claims.

I signed various types of documents which specifically contained the language of either "I swear under penalty of perjury" or "I hereby certify under penalty of perjury." To conclude that because I was not sworn to such

an oath by a person authorized to lawfully administer an oath before signing removes me from the possibility of being prosecuted by either the federal government or the Commonwealth of Virginia for perjury is an erroneous conclusion and ignores the intent of other statutes in Virginia which make it clear that presenting a claim for a benefit by the willful making of a false or fraudulent statement in a sworn statement is unlawful and the person so swearing guilty of perjury. The statutes in the Commonwealth provide numerous examples of instances where either a false statement alone or one sworn to under penalty of perjury is considered an oath-equivalent and defined as perjury.

3. Rule 3:18 of the rules of the supreme court of Virginia prohibiting the use of affidavits in summary judgment proceedings and excluding evidence which would be admissible at trial denies equal protection under the law and violates the due process clause of the Fourteenth Amendment.

The practice in Virginia has always been to deny summary judgment except in the most blatantly one sided cases. Under rule 3:18 of the Rules of the Supreme Court of Virginia the use of affidavits or deposition testimony (unless all parties to the action shall agree that such deposition may be so used) is not permitted. Only those pleadings in the official court record are considered. In an attempt to counter the unsubstantiated statements of respondent, petitioner filed an affidavit that was ignored by the trial court.

During the course of discovery respondent repeatedly distorted my deposition testimony at every opportunity by taking pieces out of context and omitting any explanation uttered subsequent to the answer respondent wanted to use. I felt that my admissions which were succinct and extremely particular with respect to what I was admitting and what I was denying, would be read in

their entirety by the court and could not be as abused as my deposition testimony had been heretofore. I therefore refused to agree to allow deposition testimony in the summary judgment proceeding because there would be no opportunity to refute or correct every sentence taken out of context or technical fact misstated. Absent an affidavit, there is no mechanism in Virginia for the non-moving party to put its version of the facts before the court.

The rule was adopted to provide trial courts with authority to bring litigation to an end at an early stage, when it clearly appeared that one of the parties was entitled to judgment within the framework of the case as made out. This case was overruled on demurrer as to petitioner's claim for constructive wrongful discharge; respondent was not entitled to judgment as a matter of law.

The rule provides for summary judgment in those cases that cannot be reached by demurrer in which the only dispute concerns a pure question of law. It applies only to cases in which no trial is necessary because no evidence could affect the result. Carwile v. Richmond Newspapers, Inc., 196 Va. 1, 82 S.E.2d 588 (1954); Kasco Mills, Inc. v. Ferebee, 197 Va. 589, 90 S.E.2d 866 (1956); William Schluderber-T.J. Kurdle Co. v. Trice, 198 Va. 85, 92 S.E.2d 374 (1956); Goode v. Courtney, 200 Va. 804, 108 S.E.2d 396 (1959); General Accident Fire & Life Assurance Corp. v. Cohen, 203 Va. 810, 127 S.E.2d 399 (1962).

The practice in Virginia violates the due process clause of the Fourteenth Amendment. Four years of discovery has produced volumes of evidence supporting my allegations. Four years of discovery has produced more than enough evidence to affect the result, not the least of which includes the perjured testimony of respondent's primary witnesses. Respondent's answers to admissions confirm respondent's primary witness, Linda Caviness, lied under oath during her deposition. None of this evidence

which would be admissible at trial has been considered by the trial judge in rendering a decision or even in evaluating the evidence that is before the court. Despite the fact that petitioner warned the court that the entire presentation of respondent was incomplete and misleading, the trial judge relied on the unsubstantiated statements of respondent in granting summary judgment. Respondent should not be entitled to summary judgment by perpetrating a fraud upon the court in the guise of "undisputed facts" supposedly contradicting petitioner's original pleading and perjured testimony.

Petitioner has been denied due process.

4. The trial court erred when it failed to recognize that the provisions of chapter 20 of title 54.1 (§54.1-2000 et seq.) of the code of Virginia are relevant in Virginia. When the trial court ruled that the ethical standards for accountants are not relevant it violated petitioner's right to equal protection under the law and the due process clause of the Fourteenth Amendment.

Petitioner was licensed as a certified public accountant in the Commonwealth of Virginia on July 23, 1979. There is a complete body of law defined in the Virginia statutes and countless rules and regulations promulgated by the Virginia Board of Accountancy, an agency created by statute in the Commonwealth of Virginia. Those rules and regulations define unprofessional conduct (§54.1-2006) to include "dishonesty, fraud, or negligence in the practice of public accountancy" with its resultant sanctions.

It is inconceivable that the trial court would state that ethical standards for accountants are not relevant and thus ignore the rules and regulations either promulgated or adopted by an agency created by Virginia statute. Petitioner is at a loss for a citation from another instance where a trial court ignored the laws of its own state.

Common sense dictates that the rules and regulations of the Virginia Board for Accountancy, Department of Professional and Occupational Regulation are applicable to Petitioner as a licensed CPA in the Commonwealth of Virginia.

5. Respondent's intentional presentation of deceptive and misleading statements and the use of testimony by respondent's lead witnesses which counsel knew was perjured constitutes a fraud upon the court and a violation of the Virginia Code Of Professional Responsibility, DR 7-102(a)(4), (5) and (6). The court's reliance on such false testimony in granting summary judgment deprived petitioner of her right to a trial and due process as protected by the Seventh And Fourteenth Amendments.

Perjured Testimony

While deposition testimony is not admissible in a motion for summary judgment without consent, it most certainly must be used by respondent's counsel in conjunction with respondent's answers to admissions and documents produced during discovery in evaluating the credibility of respondent's own witnesses. There is clear and convincing evidence that Linda Caviness' sworn deposition testimony is perjured as it has been directly contradicted by respondent's own answers to admissions.

If the perjured testimony related to an inconsequential fact with respect to respondent's defense in this suit it could possibly be overlooked as immaterial to the outcome of the case. However, the testimony of Linda Caviness, as the primary witness of respondent, goes to the heart of this lawsuit. Respondent's entire defense and theory of my resignation is based on the testimony of Linda Caviness and documents which she has written. Her credibility, therefore, is extremely critical to this case.

Caviness' deposition testimony regarding a "list" given to her by petitioner is the basis for her alleged knowledge regarding pension irregularities by the controller (petitioner) with respect to respondent's pension plan. Respondent's entire defense is that I voluntarily resigned as a result of a personality conflict with Caviness, but more specifically, as set forth by Caviness in her memorandum of January 24, 1992, my resignation was in direct response to a confrontation by Caviness regarding said pension irregularities. On direct, point blank examination regarding receipt of such a list, Caviness has testified that she did in fact receive such a list and that I gave it to her. Not only did she receive the list, but Caviness remembers an extremely detailed conversation between herself and petitioner when the list was given to her. Respondent has admitted that the list in question was not received by Caviness until after my departure on February 19, 1992. Despite petitioner's counsel's letters to respondent's counsel stating that Mrs. Caviness concocted her entire story regarding the reason for my resignation after I resigned, based it on information she learned after I resigned, and that several of Caviness' memoranda attempting to incriminate petitioner in a scheme of wrongdoing were written prior to the occurrence of the events stated in the memoranda and just could not possibly have happened as set forth by Caviness, respondent's counsel has persisted in putting forth a defense and theory of resignation based on such perjured testimony and false evidence.

Caviness based her knowledge of alleged pension irregularities by Petitioner on a "list" which she stated in her deposition that she had indeed received from Petitioner (pages 293-298 of Exhibits to Caviness deposition, Vol. 2; Exhibit 1 to Plaintiff's Second Request for Admissions):

Vol. 1, page 115 Caviness deposition:

A. *I had asked Barbara to give me a list of the employees who had pension loans, and whether they received them, and when those loans were re-negotiated. And based on that, I was concerned that there was a problem.*

Q. Did she give you a list like that?

A. After refusing to do it initially, eventually she did give me a list. (emphasis added)

Vol. 1, page 116-117 Caviness deposition:

Q. Did you refinance it (Caviness loan) at a lower rate?

A. No, I did not. However, I was asked if I wanted to.

Q. And what did you say?

A. I said no.

Q. Why?

A. *Because it came to me at a time when it appeared as though – in fact, that was not exactly how it was asked. When I requested the list, the third time I requested the list I received it, but not before Barbara was really mad about it, about giving me the list. And I couldn't understand why she was so upset. And just before she gave me the list she said, "Well, if what you're interested in is refinancing your own loan to get it lower, I can take care of it for you." And I said, "No, thank you," and took the list.* (emphasis added)

Defendant's Response to Plaintiff's Supplemental Second Request for Admissions:

> *Request No. 3 – Admit that Linda Caviness did not obtain the draft of pension work papers for FYE 12-31-91 ("list" as referred to in deposition) regarding the status of pension loans, a true copy of which is attached as Exhibit 1 until after plaintiff left on February 19, 1992.*
>
> *Answer: **Admitted.***

Respondent's counsel has many other examples in Caviness' deposition where Caviness wrote memoranda citing events that were yet to happen.

On June 23, 1992 Mr. Sipes and Mrs. Caviness signed the 1991 Annual Financial Report for New York wherein they both certified:

> *"Under penalties of perjury, we declare that we reviewed this report, accompanying Federal Form 990 with attached schedules and, to the best of our knowledge and belief, it is true, correct and complete in accordance with the rules of the New York State Department of State, Office of Charities Registration and the instructions applicable to this report."* (emphasis added).

The New York registration statement was provided by respondent in response to Plaintiff's First Set of Interrogatories and Request for Production of Documents dated October, 1993. The accompanying Federal Form 990 which Mrs. Caviness and Mr. Sipes certified under penalties of perjury was attached and they had reviewed on June 23, 1992 was not completed until September 9, 1992 (emphasis added).

Respondent's counsel provided the documentation. Counsel knew or should have known that both Caviness and Sipes had certified under penalty of perjury to false statements.

In 1981 while a vice president in the San Francisco office of respondent, Larry L. Sipes orchestrated, not a loan from the National Center's pension plan which would have been in excess of the limits allowed in 1981, but an "in-service distribution" not only not allowed under the terms of the Center's pension plan documents, but also not allowed under IRS regulations.

Sipes submitted a memorandum to then president, Edward B. McConnell requesting a "sham termination." Through discovery respondent provided a copy of the Report of Termination of Employment submitted to Prudential Insurance Company of America requesting a total distribution of Sipes' vested pension funds.

The Report of Termination signed by Larry L. Sipes on December 21, 1981 indicates a Date of Termination of December 18, 1981. The signature of Edward B. McConnell as the Authorized Representative of the Contract-Holder certifies the above information as correct and is dated December 18, 1981.

Larry Sipes requested a "sham termination" as he in fact had no intention of, and did not, terminate in 1981. Larry Sipes terminated his employment with the National Center for State Courts in 1986; he returned in 1990 as its president.

Respondent's counsel had more than enough examples and sufficient documentation to know that the testimony of both Sipes and Caviness was perjured and that both had signed documents under penalty of perjury that were false.

Respondent counsel's use of testimony of the president and vice president of the National Center for State Courts which counsel knew was perjured and the offering of such perjured testimony and documents which counsel knew were back dated by Caviness, containing a description of events yet to occur, constitutes a fraud upon the court in violation of Virginia Code of Professional Responsibility, DR 7-102(a)(4) and (6).

Intentional Misrepresentation of Facts

There are 38 admissions referenced by the respondent in the Motion for Summary Judgment, all of which the respondent claims contain "undisputed facts" and which contradict petitioner's original pleading. The trial court relied on the misrepresentation of facts and admissions and reversed its demurrer opinion on the basis of respondent's representation that petitioner's admissions contradicted her original pleading. If the trial court read the underlying record in this case, it certainly did not consider the facts in a light most favorable to the non-moving party, petitioner.

Petitioner clearly warned the court that the entire brief of respondent was incomplete and misleading. Of those 38 supposed admissions, 8 were actually admitted, 14 admitted only the existence of a document, 11 contained a partial admission with a denial of other parts of the admission and 5 were unequivocally denied. The court has not only accepted respondent's statement as to "undisputed facts", but has accepted respondent's incorrect use of technical terms and facts as well, all to the detriment of petitioner. Respondent has clearly manipulated admissions and facts in this case.

The trial court has reached the conclusion that I resigned following a series of altercations with my supervisor. While it is true that my resignation did follow a series of altercations with my supervisor, Caviness, it is

also true that my resignation followed 18 months of memoranda to Caviness and Sipes regarding the falsification of timesheets, all of which were ignored. Respondent alleges my resignation is the result of the altercations with Caviness; I allege my resignation was the result of management's failure to address or correct the manipulation of timesheets and the requirement that I swear as true and correct the resultant false and misleading financial information.

With the exception of noting every argument which respondent mentioned in its pleadings, the trial court has ignored the contents of the 13 memoranda I wrote subsequent to the first one to Larry Sipes of June 25, 1990 and the last one of January 9, 1992. There were at least 13 memoranda to Sipes outlining various problems with the accounting system and the seriousness of the manipulation of time sheets during that 18 months. There is no mention by the trial court of any of these save Sipes' July 5 reply to my June 25, 1990 memo. After accepting respondent's representation that I failed to respond to that memo, the trial court jumped to January 9, 1992. Actually reading my June 25th memo with its attachments, however, would show that no response was necessary as everything that Sipes' July 5 note called for was in fact contained within the memo I wrote and its attachments. Respondent also failed to note the tone of Sipes' memo to me when he stated that I might possibly be guilty of slander by accusing fellow staff of fraud. This was brought to the trial court's attention in petitioner's brief in opposition.

Contrary to respondent's repeated assertions that the evidence shows an attempt to clarify and correct the manipulation of timesheets, the evidence clearly shows that for 18 months petitioner wrote memoranda to management which fell on deaf ears. By selectively choosing words here and there from a document and by selectively choosing pieces of an admission with total disregard to the entire admission, respondent has inferred that Sipes and

Caviness took petitioner seriously and made every effort to have the manipulation of time sheets cease. However, by reading documents, admissions and testimony in their entirety and in context, the opposite conclusion to respondent's assertions can be reached.

The most egregious intentional misrepresentation, however, involves the January 15, 1992 memorandum of Sipes to staff regarding timesheets (Appendix C) and the trial court's conclusions with respect thereto. The trial court has stated:

> *Hale admits that, with few exceptions, her complaints about inaccurate time sheets were properly addressed and the time sheets were corrected. She also admits that the National Center took other steps to remedy the time sheet problem. On the day Hale submitted her letter of resignation, six days after she refused to sign H1s, Sipes sent a memorandum instructing all employees to report their time accurately*[2]

The trial court has added meaning to an admission that is not there, i.e., her complaints were properly addressed. There is no admission that petitioner's complaints were properly addressed. There is also no admission that the National Center took any steps to remedy the time sheet problem other than to correct a specific timesheet at a specific time and then wait for the next falsified timesheet to be found.

Petitioner's brief in opposition, pages 9-10 states:

> *During the summer of 1991, Hale became so exasperated with the process she proposed that management require a certification on the individual timesheets to emphasize the importance*

[2] Trial court opinion Appendix A-6.

> *of correctly recording all time, such certification was to be signed by the person completing the timesheet and the supervisor reviewing it. Such certification would have prevented the intentional manipulation of timesheets by either the individual staff person or at the direction of that person's supervisor by the selective recording of hours worked. Management refused Hale's request because the managers would not certify the accuracy of these timesheets. The problem continued to worsen in spite of Hale's ongoing complaints.*

The only thing I admitted in No. 60, Exhibit 21, was that it was a true and correct copy of the Sipes' January 15, 1992 memo. I did not admit to respondent's rewrite of its contents which the trial court apparently accepted.

The most obvious indication of the trial court's apparent failure to read the underlying record in this case can be seen from its conclusion that, "*Sipes sent a memorandum instructing all employees to report their time accurately*[3] (emphasis added)." The document itself says no such thing. Petitioner's brief in opposition states at page 11:

> *"Sipes did not require the completely accurate reporting of time, and in fact, directed staff to continue the very practice Hale was complaining about, i.e., the selective reporting of time (so that the memo itself was a clear invitation and direction for the violation of OMB Circular A-122, Attachment B, Paragraphs 6(L)(2)(a) and 6(L)(2)(b)."*

There can be no mistake that Sipes' memorandum does not instruct staff to report their time accurately[4].

---

[3] Trial court opinion Appendix A-6.

[4] Sipes' January 15, 1992 memo, items 3 and 4, Appendix C-1.

Reporting some of one's time to where one "actually" worked[5] (as opposed to billing time to projects where one didn't work[6]) is not the same as either "accurately" reporting one's time or "accurately reporting **all** of one's time" as required by the federal regulations.

Respondent intended to deceive the court by stating at page 11 of its reply brief:

> *In response to her memorandum regarding the one non-billable timesheet with which she was not satisfied, the National Center sent out a public memorandum instructing all employees (billable or not) to report their time accurately. (Admission 60; Exhibit 21). (*emphasis added*)*

Again, there is no admission that there was only "one" timesheet with which petitioner was not satisfied. Sipes memorandum does not instruct staff to report their time accurately. There is sufficient evidence in the record to indicate it was the practice of manipulating timesheets that respondent failed to address which led to petitioner's resignation. It was also the severity of this "one" timesheet. It was not just any timesheet that was being falsified. As stated at page 10 of petitioner's brief in opposition:

> *"Finally, following a situation involving a timesheet in which Hale's supervisor, Vice President Caviness, directed the incorrect charging of time, Hale knew, rather than just suspected, that the integrity of the financial system had been compromised and compromised at the highest level."*

One can hardly reach the conclusion from the record that respondent took the problem seriously and made

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[5] Sipes' January 15, 1992 memo, item 2, Appendix C-1.

[6] Sipes' January 15, 1992 memo page 2, paragraph one, Appendix C-2.

any effort to have the manipulation of timesheets cease when after 18 months of memoranda advising there was a timesheet problem it was the chief financial officer of the organization directing the falsification and in response to petitioner's final desperate plea the president sent a memo to staff telling them to continue the very practice I told him was in violation of the federal regulations. Respondent had 18 months, 13 serious memoranda and one other "new year" (1991) in which a memo from management could have been sent. One need only read the introduction to the memorandum to get a feel for the tone of the memorandum and how serious Mr. Sipes took the problem:

> *"I have always felt that a new year should begin with lofty matters. While that is still my feeling I'm trying a change of pace by starting 1992 with a homey bit of housekeeping. While I have no reason to believe there are any significant problems with our time reporting system I would like to review the ground rules to assure that the system is functioning as intended. For those of you who have not committed to memory our administrative manual or time sheet instructions, here are several guides that I know you will recognize as old friends the minute you read them:"*

For 18 months Sipes received a constant stream of complaints from me regarding the manipulation and falsification of time sheets, yet he had no reason to believe there were any significant problems.

At every opportunity respondent has misrepresented the facts of this case, has misquoted petitioner's admissions or taken them out of context, and has relied on the court's ignorance of accounting matters to foster its position.

Contained within the memoranda I wrote, all of which were referenced and in the trial court record, there are numerous indications that respondent took no action to

stem the tide of falsified timesheets. Respondent took no action in 18 months; not one memorandum to staff, not one training meeting on how to properly complete time sheets, not even a meeting with me to discuss the problem. Yet respondent has represented to the court that immediately following my presentation of this "one" insignificant incorrect timesheet management immediately took corrective action and everything was resolved to my satisfaction; hence the only conclusion that can possibly be reached is that I voluntarily resigned because of conflicts I had with Linda Caviness. The record does not support that conclusion.

While there can be no expectation that respondent's witnesses have any duty to present facts honestly and not commit perjury, petitioner and the trial court are entitled to the expectation that respondent's counsel abide by the Virginia Code of Professional Responsibility for lawyers and not knowingly use perjured testimony, knowingly make false statements of fact or participate in the preservation of evidence knowing that the evidence is false. Respondent has relied on the court's lack of technical knowledge as well to distort the record in this case.

CONCLUSION

I wanted to stay and could have and would have if only management took some action to have the falsification of timesheets cease. It was not the intolerability of working conditions or even Linda Caviness that caused my resignation. It was the intolerability of being required to certify to financial statements based on falsified timesheet data – falsified at the direction of my supervisor, Linda Caviness, vice president and chief financial officer of the organization, actions which were condoned by the president of the organization, Larry Sipes that caused my resignation. It was not voluntary.

This is not a case ripe for summary judgment based on the perjured testimony of respondent's witnesses and the deceptive manipulation of documents and admissions by respondent's counsel.

The trial court erred when it evaluated the evidence even though the facts were in dispute and tried the case based on respondent's presentation rather than submitting it to a jury. That the trial court did so based entirely on respondent's presentation can be implied from the fact that the trial court's opinion reads like an excerpt from respondent's brief. The opinion even includes all of the incorrect terminology and phrases used by the respondent but not one opposition statement as contained in petitioner's brief or actual admissions or documents.

The summary judgment granted in this case violates Article VI of the Constitution, the Sixth, Seventh and Fourteenth Amendments to the Constitution, several sections of Virginia law, and provisions of the Rules of the Supreme Court of Virginia. It defies common sense. More importantly, however, it violates the basic principles upon which this country was founded – the right of any individual to be honest and to refuse the coercion of one's employer to attest to false information.

WHEREFORE, for the reasons set forth above, the Petitioner respectfully prays that this Court grant this Petition for Certiorari to review the decision of the Ninth Judicial Circuit Court, City of Williamsburg, James City County, Virginia.

Respectfully submitted, this 15th day of August 1997.

/s/
BARBARA J. HALE
1700 Shady Pond Road
Lanexa, Va. 23089-5946
(804) 966-5441
Petitioner

APPENDIX A

Book 45 Page 805

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF
WILLIAMSBURG
OF JAMES CITY COUNTY

BARBARA J. HALE,
Plaintiff,
v.

At Law No. 6583

NATIONAL CENTER
FOR STATE COURTS,
Defendant.

ORDER

For the reasons set forth in the accompanying Letter Opinion, it is hereby ORDERED that the defendant's Motion for Summary Judgment is granted.

Let the Clerk send a copy of this Order to all counsel of record.

ENTERED: 10/19/96

/s/
William L. Person, Jr.
Circuit Court Judge

Seen and agreed to:

/s/
Eva S. Tashjian-Brown (VSB No. 18669)
W. Carter Younger (VSB No. 01174)
Deanna L. Ruddock (VSB No. 36396)
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
901 E. Cary Street
Richmond, Virginia 23219
(804) 775-1000

Seen and objected to:
/s/
William G. Shields
William G. Shields and Associates
300 Arboretum Place, Suite 200
Richmond, Virginia 23236

Carol A. N. Breit
5602 Grove Avenue
Richmond, Virginia 23226

A COPY TESTE:
HELENE S. WARD, CLERK
BY: /s/
Deputy Clerk

A-3

Commonwealth of Virginia
Ninth Judicial Circuit

(Seal)

September 25, 1996

William G. Shields, Esq.
William G. Shields & Associates
300 Arboretum Place, Suite 220
Richmond, Virginia 23236

Eva S. Tashjian-Brown, Esq.
W. Carter Younger, Esq.
Deanna A, Ruddock, Esq.
McGuire, Woods, Battle & Boothe, L.L.P.
901 E. Cary Street Richmond, Virginia 23219

Re: Hale v. National Center for State Courts
Law # 6583

Dear Counsel:

This case is before the Court on the defendant's motion for summary judgment. Having reviewed the pleadings and admissions, the Court decides that there are no unresolved material issues of fact and hereby grants summary judgment in favor of the defendant, the National Center for State Courts.

Hale has filed an amended motion for judgment, claiming damages for breach of contract (Count I), wrongful discharge (Count II), and infliction of emotional harm {Count III). This Court granted the defendant's demurrer to Count I; the plaintiff dropped Count III. The defendant has filed for summary judgment on Count II, the wrongful discharge claim.

Hale has submitted an affidavit for consideration in this disposition. Affidavits, however, are not considered on summary judgment. The Rules of the Virginia Supreme Court provide that a court may consider "the pleadings, the orders, ... [and] the admissions." Va. Rule 3:18. In her letter requesting that the Court consider this affidavit, Hale concedes that affidavits are not generally accepted in State Court on summary judgment. This case does not warrant an exception to that rule.

Summary judgment is appropriate where no material issues of fact are genuinely in dispute. Va. Rule 3:18. Although Hale alleged facts in her pleadings that, if substantiated, could have supported her claim for wrongful discharge, her admissions contradict those claims. The conflict between the facts as presented in Hale's pleadings and as revealed in her admissions leads the Court to reach an opinion here contrary to that rendered on demurrer. It is clear from the undisputed facts that Hale voluntarily resigned. This Court holds that there was no constructive discharge and that even if there were, the discharge was not wrongful.

I. Undisputed Facts

Because this matter is submitted on summary judgment, the Court considers the facts in the light most favorable to the nonmoving party, Hale. The following facts are admitted by Hale in her responses to the National Center's requests for admissions and in her amended motion for judgment.

Hale was an employee of the National Center from March 24, 1975, through February 21, 1992. A certified public accountant, Hale was a controller for the National Center. She prepared time sheets for submission for federal and state grants. On January 15, 1992, Hale tendered a resignation letter to her employer and ceased work the following month.

In her amended motion for judgment, Hale alleged that Larry Sipes, the President of the National Center, and Linda Caviness, Hale's supervisor, required her, as a condition of her employment, to certify as true falsified time sheets which the National Center used to obtain grants from the federal and state governments.

In the fall of 1991, Sipes told Hale that she "had a job unless the financial condition of the Center totally deteriorated or [she] gave them cause." When she tendered her resignation letter, Hale expected that Sipes would try to dissuade her from resigning and was surprised when he did not. On January 15, 1992, she resigned but offered to continue work until May 29, 1992. She left on February 21, 1992.

Hale's resignation followed a series of altercations with her supervisor, Caviness. In June 1991, following one of their many confrontations, Hale filed a harassment complaint with Sipes, alleging that Caviness had raised her voice at her in front of her staff. Sipes investigated this complaint and advised that further confrontations would result in discipline to both Caviness and Hale. The personal animosity between Hale and Caviness flared into several heated arguments on topics ranging from a proposed computer conversion, to the use of Hale' s office space to the preparation of time sheets. In addition, Hale opposed Caviness's decision to reassign some of Hale's duties, found Caviness incompetent, and had difficulty getting along with her.

Hale relies on the time sheet issue as the basis of her claim for wrongful termination. Specifically, she alleges that Caviness and Sipes asked her to sign time sheets that falsely allocated hours worked by the National Center's employees. In a memorandum dated June 25, 1990, Hale brought this problem to Sipes' attention. He asked her to be more specific in her allegations and to provide him with an

"objective description of the events." Hale never responded to this request. On January 9, 1992, she refused to sign anymore H1s, a time sheet used to obtain federal funds.

Hale admits that, with few exceptions, her complaints about inaccurate time sheets were properly addressed and the time sheets were corrected. She also admits that the National Center took other steps to remedy the time sheet problem. On the day Hale submitted her letter of resignation, six days after she refused to sign H1s, Sipes sent a memorandum instructing all employees to report their time accurately. The National Center brought the problem to the attention of outside auditors, the accounting firm of Deloitte & Touche, in 1992. It was at this point that Hale first raised the issue with the auditors.

II. Constructive Discharge

A constructive discharge occurs when an employer forces an employee to resign by creating or failing to remedy an intolerable work environment. There are no Virginia Supreme Court cases directly addressing constructive discharge. The Fourth Circuit has held that the elements of constructive discharge are: {1) the employer specifically intended to cause the employee to resign and (2) the employee's working conditions were intolerable. Bristow v. Daily Press. Inc., 770 F.2d 1251, 1255 (4th Cir. 1985). The employer must have deliberately made the employee's working conditions intolerable. The theory of constructive discharge protects an employee "from a calculated effort to pressure him into resignation through the imposition of unreasonably harsh conditions." Id. The employer's intent can be inferred from circumstantial evidence, such as a failure to act in the face of known intolerable working conditions. Id. The working conditions must have been more than stressful or unpleasant; they must have been so objectively intolerable that a reasonable person in the plaintiff's position would have felt compelled to resign. Id.

Although Hale claimed in her pleadings that "she was forced to resign ... as a result of her failure to ... certify documents," her admissions reveal that she was not constructively discharged. The evidence shows that the National Center did not intend for her to leave. It took actions to correct the problem that Hale claims forced her to resign. She admits that when she tendered her resignation she did not think Sipes wished her to resign; instead, she expected him to dissuade her from leaving and was surprised when he did not try. Shortly before she quit, in early November 1991, Sipes assured her that she "had a job unless the financial condition of the Center totally deteriorated or [she] gave them cause." No one threatened to fire her. Although she alleges that the National Center required her to certify false time sheets, her admissions show that her complaints about false time sheets were heeded. Rather than retaliate against her for complaining, Sipes asked her to elaborate on the problem and took remedial action.

Hale's admissions reveal that her working conditions were not intolerable. Most significantly, she was willing to remain at the National Center for four months after tendering her resignation. Notwithstanding her allegation that the National Center required her to sign falsified time sheets, Hale's admissions demonstrate that there was no coercion and that in most cases the time sheet problems were resolved to her satisfaction. .

Hale's frequent conflicts with Caviness undoubtedly made her job unpleasant. But "[e]very job has its frustrations, challenges and disappointments; these inhere in the nature of work." Bristow, 770 F.2d at 1255. There is nothing in the evidence to indicate that her disagreements with Caviness were calculated to force her to resign. Sipes did not ignore the unpleasant circumstances; he investigated Hale's complaints. The selection of a new Financial Director would have freed Hale from constant

contact with Caviness. She chose not to wait for that development. Sipes' refusal to rearrange personnel immediately to suit Hale's desires does not indicate he wanted her to quit.

There is no evidence that the National Center intended to force her to resign. Hale's desire to continue in her position an additional four months demonstrates that her work conditions were, at the least, tolerable.

III. Wrongful Termination

Assuming arguendo that the National Center did constructively discharge Hale, she cannot show that this discharge was actionable. As decided on demurrer, Hale was an employee-at-will: both she and the National Center were free to terminate her employment at any time. Lockhart v. Commonwealth Educ. Sys. Corp., 247 Va. 98, 102 (1994) (quoting Miller v. SEVAMP, Inc., 234 Va.462, 465 (1987)). This rule is not absolute; Virginia does recognize a narrow exception for employees who are discharged in violation of Virginia public policy. Id. The revision of the Virginia Human Rights Act, which was the basis of the Lockhart decision, does not undermine the central holding of that case: that a discharge in violation of public policy is actionable. The public policy must be expressed in a Virginia statute and Hale must show that her discharge violated this public policy. Lawrence Chrysler Plymouth Corp. v. Brooks, 251 Va. 94, 98 (1996).

In her amended motion for judgment Hale claimed that the certification of false time sheets would violate Virginia Code §18.2-434, several federal statutes, and the professional ethical standards for accountants. Because a claim for wrongful discharge must be based on a violation of public policy as expressed in a Virginia statute, federal statutes and the ethical standards for accountants are not relevant. Hale's admissions reveal that her resignation was unrelated to Virginia Code §18.2-434, which defines

perjury as swearing falsely under a lawfully administered oath. Hale was not under a lawfully administered oath and hence could not have committed perjury. Even if the National Center had attempted to force her to sign false time sheets and then discharged her when she refused, this action would nor have violated the public policy expressed in §18.2-434: perjury is not implicated.

Hale refused to certify all Hls, whether false or accurate. The National Center took no action against her. Instead, Sipes asked her to elaborate on which duties she was no longer willing to perform and then reminded all the employees to be accurate on the time sheets. The National Center's efforts to correct the time sheet problem, even bringing it to the attention of the auditors, demonstrate that it did not seek to perpetuate or conceal the inaccuracies. Hale admits that the problems between her and Caviness began over the office space issue and she believed Caviness was retaliating against her over that conflict, an issue which does not violate public policy.

IV. Conclusion

There being no unresolved material issues of fact, the Court finds that this matter is ripe for summary judgment. Contrary to her pleadings, Hale's admissions show that she was not forced to sign falsified time sheets, nor was she forced to resign. The undisputed facts reveal that the National Center did not constructively discharge her. Even if her admissions had indicated that she was discharged, they do not support an action for wrongful termination. The Court grants summary judgment in favor of the defendant, the National Center.

The Court requests counsel for the defendant, Ms. Eva Tashjian Brown, to prepare an order consistent with this opinion.

Yours truly,
/s/

William L. Person, Jr.

WLPjr/dds

APPENDIX B

APPENDIX B

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 28th day of May, 1997.

Barbara J. Hale,
Appellant,

against

Record No. 970084
Circuit Court No. L-6583

National Center for State Courts,
Appellee.

From the Circuit Court of the City of Williamsburg and County of James City

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

Chief Justice Carrico took no part in the consideration of this case.

A Copy,
Teste:
David B. Beach, Clerk
By: /s/
Deputy Clerk
MAY 29 1997

APPENDIX C

APPENDIX C

NATIONAL CENTER FOR STATE COURTS

MEMORANDUM

TO: Staff
FROM: Larry L. Sipes
DATE: January 15, 1992

SUBJECT: Time Sheets

I have always felt that a new year should begin with lofty matters. While that is still my feeling I'm trying a change of pace by starting 1992 with a homey bit of housekeeping. While I have no reason to believe there are any significant problems with our time reporting system I would like to review the ground rules to assure that the system is functioning as intended. For those of you who have not committed to memory our administrative manual or time sheet instructors, here are several guides that I know you will recognize as old friends the minute you read them:

1. The obligation of full-time profession staff is to bill a minimum of 37.5 hours per work week on assigned projects, programs and activities.

2. All staff in completing time sheets should log time to the project or budget upon which time actually is spent.

3. Most of us will work considerably more than the required minimum of 37.5 hours.

4. During those weeks exceeding 37.5 hours the choice of projects or budgets to be charged for the 37.5 hours is a matter to be resolved between the staff person and project director or supervisor. The work above 37.5 hours is contributed to the good of the order or project but customarily is not charged.

5. Each staff person in recording and signing his or her time sheet certifies its accuracy.

6. The supervisor or Vice-president then reviews and approves the time sheet for submission to accounting.

January 15, 1992
Page Two

--In an abundance of caution let me state the obvious corollary: It is impermissible to bill time to projects, programs or activities on which time is not actually expended.

Like a good book, you probably wish this memorandum would never end. But my pleasure in writing it and your pleasure in reading it must be moderated in these times of constraint. If this deprivation is intolerable I suggest you consult the Vice-president with whom you work for the fascinating history of the 37.5 hour work week; the intricacies of fund accounting; the distinction between cost reimbursement contracts or grants and fixed price projects; and the fascinating tension between auditors as a source of assistance and as fiscal cops.

/s Larry
L.L.S.